



REPUBLIC OF KENYA
IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT NAIROBI

CAUSE NUMBER 454 OF 2013

DANIEL MUTAHI MUNYI.....CLAIMANT

VERSUS

SUNFLAG TEXTILE & KNITWEAR MILLS LTD.....RESPONDENT

JUDGMENT

1. The claimants seek order of this Court for 2 months salary in lieu of notice of termination, salary for May, 2007 to July 2011 when a criminal case against him was pending in Court, untaken leave for 105 days, service pay for 10 years and 12 months salary as compensation for unfair termination among others.
2. According to him he was employed by the respondent as a machine operator from 21st July, 1997 until 26th May, 2007. He complains that on 26th May, 2007 the respondent caused him to be arrested and charged with the offence of stealing but was acquitted in October 2011. Upon acquittal, he sought reinstatement to work but the respondent refused. The respondent further failed to pay his terminal dues. The claimant avers that the manner of termination of his services was wrongful and unfair.
3. The respondent on its part refuted the claimant's allegations and averred that the claimant and his colleague colluded to steal fabric from the respondent's premises and were caught in a trap set by the new security officer. The respondent further averred that the claimant was arrested and arraigned in Court on criminal charges and never reported back to work upon being released on bail until 22nd June, 2007 when his services were terminated.
4. The respondent further averred that the claim is totally defective and not properly before the Court since the cause of action arose under Employment Act Cap 226 (now repealed) and that the 5th schedule to the Labour Relations Act clearly stipulated that the procedure applicable is under the Trade Disputes Act. The respondent further averred that criminal proceedings were not a bar for the claimant to report to duty and by staying away he was guilty of gross misconduct leading to summary dismissal.
5. It is not in dispute that the claimant was arrested on 26th May, 2007. He and his colleagues were charged, tried and acquitted on 21st October, 2011. This implies this cause of action accrued under the repealed Employment Act, Cap 226. The arrest and arraignment in Court of the claimant was no bar for him to pursue a claim for wrongful dismissal. Further the Employment Act, 2007 was not in force when the cause of action accrued hence cannot apply since the Act

does not make provision for retrospective application. Under the repealed Act an employee could be summarily dismissed for reason among other if such employee commits or on reasonable and sufficient grounds is suspected of having committed a criminal offence against or to the detriment of his employer or his property. A plain reading of this provision in the repealed law yields the meaning that the employee need not be guilty of an offence. Reasonable suspicion is enough. Besides standard of proof in criminal cases is normally higher than civil cases hence an acquittal on a criminal charge is not necessarily a bar to disciplinary proceedings against an employee on same facts.

6. A perusal of the criminal proceedings show that the claimant was among those arrested at the respondents premises on material night under suspicious circumstances. If it be true that the goods belonged to the Security Officer Mr. Keta, why would the claimants be called to help transport them by the Security Officer and at night? The claimant having worked for the respondent for a long time should have sought to verify the claim by Mr. Keta if at all he made it. Employment relationship is based on trust and suspicion erodes that very trust. In the circumstances the Court finds that the respondent was justified in summarily dismissing the claimant under section 17(g) of the repealed Employment Act (Cap 226). The claim is therefore found without merit and is hereby dismissed with no order on costs. The respondent will however pay the claimant admitted sum of Kshs.17,447/= on account of days worked in the month of May, 2007 and 24 days of accrued leave

7. This judgment applies to cause number 450 of 2013 which have similar facts as this cause and ought to have been consolidated with this cause in earlier stages. The claimant in cause number 450 of 2013 is awarded Kshs.8,903/=.

8. It is so ordered.

Dated at Nairobi this 26th day of February 2016

Abuodha J. N.

Judge

Delivered this 26th day of February 2016

In the presence of:-

.....for the Claimant and

.....for the Respondent.

Abuodha J. N.

Judge